

EXHIBIT A

FILED.

NOV 18 2021

YAKIMA COUNTY
DISTRICT COURT

IN THE DISTRICT COURT OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

GARY LOFLAND,

Plaintiff,

VS.

PHILLIPS NORTH AMERICA, LLC., a Delaware corporation registered with the Washington Secretary of State and doing business in the State of Washington,

Defendant.

NO. 421-04980

COMPLAINT

COMES NOW Plaintiff GARY LOFLAND, and by way of Complaint against the Defendant states and alleges as follows:

1. PARTIES

1.1 The plaintiff Gary Lofland is a married a man who resides in Yakima, Washington.

1.2 The defendant Phillips North America LLC. Is a Delaware corporation registered with the Washington Secretary of State and doing business in the State of Washington.

Complaint-1

**LAW OFFICES OF
MEYER, FLURGOE & TENNEY, P.S.
230 South Second Street - P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500**

1 **2. JURISDICTION**

2 2.1 The District Court has jurisdiction pursuant to RCW 3.66.020.

3 **3. VENUE**

4 3.1 Venue is proper in Yakima County pursuant to RCW 4.12.025 because
5 the defendant transacted business in Yakima County.
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9 **4. FACTUAL BACKGROUND**

10 4.1 Philips manufactures, markets, sells, and distributes a variety of
11 products for sleep and home respiratory care.
12

13 4.2 On or about August 22, 2019 Lofland purchased a Phillips "Dream
14 Station BIPAP."

15 4.3 The BIPAP was manufactured by the defendant Philips Respironics.
16

17 4.4 The use of a BIPAP was prescribed by Lofland's physicians.
18

19 4.5 On or about June 14, 2021 Lofland received a recall notification from
20 Philips.
21

22 4.6 On August 23, 2021 Philips informed Lofland the resolution of the
23 defect would take some twelve (12) months.
24

25 4.7 Philips informed Lofland the recall was necessitated by a dangerous
26 condition in the BIPAP which could be life threatening, cause permanent
27 impairment, and require medical intervention, including "adverse effects to other
28 organ (e.g., kidneys) and toxic carcinogenic effects..."
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1 4.8 At the time of the notice Philips did not have a cure for the defect and
2 was unwilling to offer a replacement.

3 4.9 Because of medical conditions Lofland needed to utilize a BIPAP and
4 as a result replaced the BIPAP.

5 4.10 On August 7, 2021 Lofland wrote the Mr. Don Spense, CEO of Phillips
6 requesting reimbursement of the cost of replacing the Philips produce.
7

8 4.11 No response was received.
9

10 4.12 October 8, 2021 Lofland again wrote Mr. Spense seeking
11 reimbursement.

12 4.13 Once gain the letter was ignored.
13

14 4.14 On November 8, 2021 Lofland received a telephone call from
15 "customer service" at Philips. Lofland was informed Philips would not reimburse
16 the costs of replacing the defective and dangerous product.
17

18 5. CAUSES OF ACTION

19 5.1 The defendant Philips has:
20

21 (a) Breached the express warranty.

22 (b) Breached the contract.

23 (c) Breached the implied warranty the product is safe and will not
24 bring harm to the buyer.
25

26 (d) Breached the implied warranty of merchantability that the
27 product was fit for the ordinary purpose for which it is used.

28 (e) Violated the Washington Consumer Protection Act by its unfair
29 practices.
30

1 (f) Violated the Magnuson-Moss Act, 15 USC 2301 et. seq.

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4 **G. PRAYER FOR DAMAGES**

5 **WHEREFORE**, the Plaintiff prays the court award:

6
7 (a) The cost of replacement of the defective product.

8 (b) Damages under the Consumer Protection Act.

9 (c) Damages under the Magnuson-Moss Act

10 (d) Costs.

11 (e) Interest.

12 (f) Attorney Fees

13 (g) Such other relief as may be appropriate.

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18 DATED this 19 day of November 2021.

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24 GARY E. LOFLAND, WSBA #12150

25 SEAN WORLEY, WSBA #46734


26 Meyer, Fluegge & Tenney, P.S. Attorneys for

27 Plaintiff

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2 VERIFICATION
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4 I, Gary Lofland, am the Plaintiff in this case. I have read the above
5 Complaint and declare under penalty of perjury under the laws of the State of
6 Washington that I believe the contents to be true and correct to the best of my
7 knowledge.

8 DATED this 18 day of November 2021 at Yakima, WA.
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12 Gary Lofland, Plaintiff
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IN THE DISTRICT COURT OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

GARY LOFLAND,

Plaintiff,

vs.

PHILLIPS NORTH AMERICA, LLC., a
Delaware corporation registered with the
Washington Secretary of State and doing
business in the State of Washington,

Defendant.

NO. 421-64980

SUMMONS (20 DAYS)

To the Defendant: PHILLIPS NORTH AMERICA, LLC.

A lawsuit has been started against you in the above-entitled court by Plaintiff GARY LOFLAND. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing and serve a copy upon the person signing the Summons within twenty (20) days after the service of this Summons, excluding the

1 day of service, or a default judgment may be entered against you without notice.
2 A default judgment is one where the Plaintiff is entitled to what he asks for because
3 you have not responded. If you serve a notice of appearance on the undersigned
4 person, you are entitled to notice before a default judgment may be entered.
5

6 Any response or notice of appearance which you serve on any party in this
7 lawsuit must also be filed by you with the Court within twenty (20) days after the
8 service of the Summons, excluding the day of service.
9

10 If you wish to seek the advice of an attorney in this matter, you should do so
11 promptly so that your written response, if any, may be served on time.

12 This Summons is issued pursuant to Rule 4 of the Civil Rules for Courts of
13 Limited Jurisdiction.
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16 DATED this 18 day of November 2021.

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22 GARY E. LOFLAND, WSBA #12150
23 Meyer, Fluegge & Tenney, P.S.
24 Attorneys for Plaintiff
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DEC - 8 2021

Meyer, Fluegge & Tenney

RECEIVED

DEC 06 2021

District Court

IN THE DISTRICT COURT OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

GARY LOFLAND,

Plaintiff,

vs.

PHILLIPS NORTH AMERICA, LLC., a
Delaware corporation registered with the
Washington Secretary of State and doing
business in the State of Washington,

Defendant.

NO. Y21-04980

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff GARY LOFLAND, and by way of Complaint against the
Defendant states and alleges as follows:

1. PARTIES

1.1 The plaintiff Gary Lofland is a married a man who resides in Yakima,
Washington.

1.2 The defendant Philips North America LLC. Is a Delaware corporation
registered with the Washington Secretary of State and doing business in the State
of Washington.

1 4.9 Because of medical conditions Lofland needed to utilize a BIPAP and
2 as a result replaced the BIPAP.

3 4.10 On August 7, 2021 Lofland wrote the Mr. Don Spense, CEO of Phillips
4 requesting reimbursement of the cost of replacing the Philips produce.
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6 4.11 No response was received.

7 4.12 October 8, 2021 Lofland again wrote Mr. Spense seeking
8 reimbursement.
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10 4.13 Once gain the letter was ignored.

11 4.14 On November 8, 2021 Lofland received a telephone call from
12 "customer service" at Philips. Lofland was informed Philips would not reimburse
13 the costs of replacing the defective and dangerous product.
14

15 4.15 Philips was aware of the defects in the BIPAP, the dangers and health
16 hazards as early as November 2015.

17 4.16 Despite Philips knowledge of the defects in the BIPAP it failed take
18 appropriate action to protect or notify consumers.
19

20 21 **5. CAUSES OF ACTION**

22 5.1 The defendant Philips has:

23 (a) Breached the express warranty.

24 (b) Breached the contract.

25 (c) Breached the implied warranty the product is safe and will not
26 bring harm to the buyer.
27

28 (d) Breached the implied warranty of merchantability that the
29 product was fit for the ordinary purpose for which it is used.
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1 **2. JURISDICTION**

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3 **3. VENUE**

4 3.1 Venue is proper in Yakima County pursuant to RCW 4.12.025 because
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6 the defendant transacted business in Yakima County.

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8 **4. FACTUAL BACKGROUND**

9 4.1 Philips manufactures, markets, sells, and distributes a variety of
10 products for sleep and home respiratory care.

11 4.2 On or about August 22, 2019 Lofland purchase a Phillips "Dream
12 Station BIPAP."

13 4.3 The BIPAP was manufactured by the defendant Philips Respironics.

14 4.4 The use of a BIPAP was prescribed by Lofland's physicians.

15 4.5 On or about June 14, 2021 Lofland received a recall notification from
16 Philips.

17 4.6 On August 23, 2021 Philips informed Lofland the resolution of the
18 defect would take some twelve (12) months.

19 4.7 Philips informed Lofland the recall was necessitated by a dangerous
20 condition in the BIPAP which could be life threatening, cause permanent
21 impairment, and require medical intervention, including "adverse effects to other
22 organ (e.g., kidneys) and toxic carcinogenic affects..."

23 4.8 At the time of the notice Philips did not have a cure for the defect and
24 was unwilling to offer a replacement.

1 (e) Violated the Washington Consumer Protection Act by its unfair
2 practices.

3 (f) Violated the Magnuson-Moss Act, 15 USC 2301 et. seq.

4 (g) The sale of the BIPAP constituted fraud in factum.

5 (h) The sale of the BIPAP was the result of fraudulent inducement.
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10 **6. PRAYER FOR DAMAGES**

11 **WHEREFORE**, the Plaintiff prays the court award:
12

13 (a) The cost of replacement of the defective product.

14 (b) Damages under the Consumer Protection Act.

15 (c) Damages under the Magnuson-Moss Act

16 (d) Costs.

17 (e) Interest.

18 (f) Attorney Fees

19 (g) Such other relief as may be appropriate.
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1 DATED this 6 day of December 2021.

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7 GARY E. LOFLAND, WSBA #12150

8 SEAN WORLEY, WSBA #46734

9 Meyer, Fluegge & Tenney, P.S. Attorneys for
10 Plaintiff

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14 **VERIFICATION**

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16
17 I, Gary Lofland, am the Plaintiff in this case. I have read the above
18 Complaint and declare under penalty of perjury under the laws of the State of
19 Washington that I believe the contents to be true and correct to the best of my
20 knowledge.

21 DATED this 6 day of December 2021 at Yakima, WA.

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24 Gary Lofland, Plaintiff
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